

**BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS**

IN THE MATTER OF:

OPTUMRX, INC.

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AID NO. 2021- 24

CONSENT ORDER

On this day, the matter of OptumRx, Inc. ("Company"), came before Alan McClain, Arkansas Insurance Commissioner ("Commissioner"). The Arkansas Insurance Department ("AID" or "Department") is represented by Crystal Phelps, Associate Counsel, in this matter. From the facts and law before him, the Commissioner finds as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force or effect until such acceptance is evidenced by the entry of the Commissioner.
2. By the signature affixed below, Company affirmatively states that the entry of this Consent Order has been freely entered, and that no threats or promises of any kind have been made by the Commissioner, the Department, or any agent or representative thereof.
3. The parties state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein have been made, other than the terms of settlement set forth herein.

FINDINGS OF FACT

1. The Arkansas Pharmacy Benefits Manager Licensure Act (“PBM Licensure Act”), Ark. Code Ann. § 23-92-501 et seq., authorizes the Arkansas Insurance Commissioner to license and regulate the activities of pharmacy benefit managers.

2. The Company holds a PBM license issued by the Commissioner and provides claims processing services or other prescription drug or device services for health benefit plans.

3. The Department contacted the Company after receiving a complaint from a pharmacist regarding retroactive reconciliation.

4. The Department then asked the Company whether other pharmacies were affected by prohibited PBM practices under Ark. Code Ann. § 23-92-506(b)(6) and (c) from July 24, 2019 to December 31, 2019. The Company indicated that an administrative process error caused the Company to retroactively reduce payment for pharmaceutical services with certain Pharmaceutical Services Administrative Organizations and pharmacy chains.

5. The Department, through its examination, found that the Company retroactively reduced payment for pharmacist services as part of the Company’s financial reconciliation process to an effective rate reimbursement with certain Pharmaceutical Services Administrative Organizations and pharmacy chains.

6. The Company reduced payment to twelve total Pharmaceutical Services Administration Organizations and pharmacy chains in the amount of \$1,065,557.

7. The Company advised the Department that it has improved its network pharmacy payment area work procedures following the Department’s discovery of these retroactive reductions.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over the Company and the subject matter pursuant to Ark. Code Ann. § 23-92-508.

2. A pharmacy benefits manager shall not:

Make or permit any reduction of payment for pharmacist services by a pharmacy benefits manager or a healthcare insurer directly or indirectly to a pharmacy under a reconciliation process to an effective rate of reimbursement, including without limitation generic effective rates, brand effective rates, direct and indirect remuneration fees, or any other reduction or aggregate reduction of payment[.]

Ark. Code Ann. § 23-92-506(b)(6).

3. Ark. Code Ann. § 23-92-506(c) further states:

[A] claim or aggregate of claims for pharmacist services shall not be directly or indirectly retroactively denied or reduced after adjudication of the claim or aggregate of claims unless: (1) [t]he original claim was submitted fraudulently; (2) [t]he original claim payment was incorrect because the pharmacy or pharmacist had already been paid for the pharmacist services; or (3) [t]he pharmacist services were not properly rendered by the pharmacy or pharmacist.

Because the Company does not meet any statutory exception within Ark. Code Ann. § 23-92-506(c) that would lawfully allow it to retroactively reduce payment under a reconciliation process to an effective rate, the Company is barred from retroactively reducing payment for pharmacist services by the PBM Licensure Act.

4. The Department alleges that the Company violated Ark. Code Ann. § 23-92-506(b)(6) by retroactively reducing payment for pharmacist services for the period from July 24, 2019 to December 31, 2019.

5. A violation of a statute or rule enforceable by the Insurance Commissioner is punishable by a fine no greater than \$1,000 per violation, not to exceed \$50,000 in any six-month period. Ark. Code Ann. § 23-60-108.

6. Based upon the Department's findings, the Company is assessed and agrees to pay a monetary penalty in the amount of \$50,000.

IT IS HEREBY ORDERED AND JOINTLY AGREED that:

1. In consideration of the Commissioner's Findings of Fact and Conclusions of Law, the Company shall pay a monetary penalty in the amount of \$50,000.

2. The Company shall prepare a Corrective Action Plan detailing the steps taken to ensure future compliance with the PBM Licensure Act and provide the Plan to the Department no later than 30 days after filing of this Consent Order.

3. The Department shall complete future compliance checks to ensure the Company is in compliance with Ark. Code Ann. § 23-92-506(b)(6) as in accordance with its authority.

4. If future noncompliance of the PBM Licensure Act is identified, the Department will take remedial action and additional penalties may be imposed. The Company does not waive any administrative or judicial rights/remedies with respect to potential future enforcement actions.

5. The Company's execution of this document is not an admission of a violation of any Arkansas law cited herein.

6. No other penalties will be imposed or enforcement actions taken based upon any violations of Ark. Code Ann. § 23-92-506(b)(6) prior to the signing of this Consent Order, as long as the Company corrects its noncompliance with § 23-92-506(b)(6) and provides the Department with the Company's Corrective Action Plan by the requested due date.

7. The monetary penalty is to be received by the Department no later than ten (10) days after filing of this Consent Order.

IT IS SO ORDERED THIS 17th day of June, 2021.



ALAN MCCLAIN
INSURANCE COMMISSIONER
STATE OF ARKANSAS

Natalie Pons
Natalie Pons (Jun 16, 2021 14:39 PDT)

OPTUMRX SIGNATORY